

G-012/M-94-799 ORDER DENYING PETITION TO AMEND ENTITLEMENT LEVELS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Western Gas
Utilities, Inc. for Approval to Amend
Entitlement Levels Approved in its Most
Recent Rate Case

ISSUE DATE: December 21, 1994

DOCKET NO. G-012/M-94-799

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ENTITLEMENT LEVELS

PROCEDURAL HISTORY

On July 19, 1994, the Department issued Comments on Western Gas Utilities, Inc.'s (Western's or the Company's) 1993-94 entitlement filing in Docket No. G-012/M-93-1251 and recommended that Western refund money collected in the Company's 1993 True-up for entitlements the Commission did not approve for 1992-93. The Department suggested that if the Company wanted to ask for recovery of these entitlements for the 1992-93 time period it should make that request in a separate filing.

On August 26, 1994, Western submitted a filing in this docket requesting permission to recover these costs by changing its base cost of gas.

On September 21, 1994, the Department filed its Comments regarding the Company's request.

On November 7, 1994, Western filed Reply Comments to the Department's Comments.

On December 1, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. Western's Petition

In its August 26, 1994 petition, Western sought permission to amend the entitlement levels approved in its last base cost of gas filing upward by 150 Mcf from 4,892 Mcf/day to 5,042 Mcf/day for the 92-93 heating season. Those entitlement levels were approved in conjunction with the Company's last rate case (Docket No. G-012/GR-92-22) and most recently in Docket No. G-012/AA-93-218 when the 4,892 Mcf/day entitlement level was approved.

II. Arguments of the Parties

A. Western

Western asserted that all it needed to show was that the additional 150 Mcf per day of 1992-93 demand entitlements "would have been justified" if the additional entitlements had been

asked for in the original filing covering that time period. Western explained that it failed to request the additional 150 Mcf of transportation service because it had not understood that Northern Natural Gas' (Northern's) SF supply service (one of Northern's "New Services") did not contain a transportation component, unlike the previous SS and CD services offered by Northern prior to the 636 Order. Western stated that if it had realized that Northern's new SF supply service did not include a transportation component, it would have requested the amount now in question, the 150 Mcf of transportation entitlement.

The Company stated that if it had properly included the 150 Mcf/day in its request its proposed entitlement per customer would have been 1.6291 for the 1992-93 year, within the range of entitlements for the previous year, and hence approved. As further evidence of the reasonableness of its proposed amended total entitlement level (5,042 Mcf/day), the Company noted that the Department recommended a similar level of total entitlements for the 1992-93 gas year (5,025 Mcf/day) in the Department's Report and Recommendation in Docket No. G-012/AA-93-218.

B. The Department

The Department argued that Western's petition to change its Commission-approved base cost of gas is prohibited by law because the rates for the 1992-93 time period have already been established. The Department cited Minn. Stat. § 216B.16, subd. 5 which states in relevant part:

...the Commission shall determine the rates to be charged or applied by the utility for the service in question and shall fix them by order to be served upon the utility. The rates shall thereafter be observed until changed, as provided by this chapter. (Emphasis added.)

The Department argued that the Company's request to change the demand cost component of the Company's already established rates, through a change in the Company's base cost of gas, would constitute single-issue rate making.

In addition, the Department argued that under Minn. Rule Part 7825.2700, subp. 2a the Company's base cost of gas can only be changed in conjunction with a rate case.

C. Western's Response Comments

In response comments, Western denied that its request was single issue ratemaking as alleged by the Department. The Company stated that its filing in this matter was simply responding to the Department's Reply Comments in Docket No. G-012/M-93-1251. In those comments, according to Western, the Department requested that the Company file a petition to justify the 150 Mcf/day of additional entitlements.

In addition, Western argued that demand levels are changed from time to time by the Commission apart from rate cases and adjusted for in the annual true-up filings. The Company cited Minn. Stat. § 216B.16 and Minn. Rules, Parts 7825.2390 to 7825.2920 as authorizing the filing of rate schedules containing provisions for the automatic adjustment of charges for purchased gas and stated that Minn. Rules, Part 7825.2910 allows gas utilities to file for a change in demand to increase or decrease demand, to redistribute demand percentages among classes or to exchange one form of demand for another.

In sum, the Company argued that the Commission has authority to correct for the 150 Mcf/day error outside a rate case and should do so because an entitlement level which included the 150 Mcf/day additional transportation entitlements would have been found justified in Docket No. G-012/M-93-1251.

III. Commission Action

The Commission finds that it has addressed the merits of the Company's petition in a previous

Order issued December 20, 1994 in Docket No. G-012/M-93-1251. In that Order, the Commission considered the same arguments advanced by the Company in support of its petition and decided, instead, to require the Company to refund the money collected in the 1992-93 True-up for entitlements in excess of the levels approved by the Commission for 1992-93 in Docket No. G-012/AA-93-218, with interest.

In making this decision, the Commission stated:

[I]t is inappropriate for the Company to change its entitlements in its true-up filing without obtaining permission from the Commission and particularly inappropriate to do so without even notifying the Department that it was making such a change.¹ In the Matter of a Request by Western Gas Utilities, Inc. for Approval to Increase and Change its Pipeline Demand Entitlements and to Recover the Associated Costs in its Monthly Purchased Gas Adjustment, Docket No. G-012/M-93-1251, ORDER APPROVING INCREASED ENTITLEMENTS, REQUIRING CLASSIFICATION OF CERTAIN FDD RATE ELEMENTS AS DEMAND COSTS, AND REQUIRING A REFUND (December 20, 1994).

Accordingly, the Commission will deny Western's petition to amend its 1992-1993 base cost of gas. In light of this rationale for denying the Company's petition, the Commission need not address the additional grounds urged by the Department (see above) for denying the petition.

¹ To clarify, the Commission is not suggesting that notifying the Department is an adequate substitute for obtaining permission from the Commission to change its entitlement levels. The Commission is simply indicating that failure to notify the Department of its action compounded the Company's error.

ORDER

1. Western's request to amend the entitlement levels in its last base cost of gas filing, which were approved in conjunction with the Company's last rate case (Docket No. G-012/GR-92-22) is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)